

Civil Action No. 4:20-cv-03081

DEFENDANTS PAXTON'S AND LEMAUX'S NOTICE OF APPEAL

Defendants Ken Paxton, Attorney General of the State of Texas, and Kim Lemaux, Presiding Officer for the Texas Commission on Law Enforcement (“State Defendants”), file this Notice of Appeal to the United States Court of Appeals for the Fifth Circuit from the Order entered on August 27, 2021.¹ State Defendants moved to dismiss all claims based on both sovereign immunity and Plaintiffs’ lack of standing, among other things.² The order denying the motion to dismiss is immediately appealable under the collateral order doctrine.³ This notice divests this Court of jurisdiction during the pendency of the appeal because State Defendants asserted threshold jurisdiction challenges against all claims brought by Plaintiffs in

¹ ECF 68.

² ECF 28, 59.

³ *Whole Woman's Health v. Jackson*, 21-50792, 2021 WL 4128951, at *6 (5th Cir. Sept. 10, 2021) (“Our court has jurisdiction under the collateral order doctrine to immediately review the State Defendants’ appeal contesting the order denying their Eleventh Amendment immunity defenses.”); *see also P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 141 (1993); *City of Austin v. Paxton*, 943 F.3d 993, 996 (5th Cir. 2019).

this lawsuit.⁴ Based on the cited Fifth Circuit precedent, proceedings in this Court are suspended pending resolution of the appeal.

Date: September 15, 2021.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief for General Litigation Division

/s/ Todd Dickerson
TODD DICKERSON
Attorney-in-Charge
Assistant Attorney General
Texas Bar No. 24118368
So. District No. 3544329
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 | FAX: (512) 320-0667
Todd.Dickerson@oag.texas.gov

**COUNSEL FOR DEFENDANTS KEN PAXTON
AND KIM LEMAUX**

⁴ See *Whole Woman's Health*, 2021 WL 4128951, at *6 (“[T]he notice appealing the order ‘divest[s] the district court of its control over those aspects of the case involved in the appeal.’”) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)); see also *Wooten v. Roach*, 964 F.3d 395, 412 (5th Cir. 2020); *Williams v. Brooks*, 996 F.2d 728, 729–30 (5th Cir. 1993).

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this foregoing motion has been served on all parties of record by electronic notification through ECF by the United States District Court for the Southern District of Texas, Houston Division, on September 15, 2021.

/s/ Todd Dickerson
TODD DICKERSON
Assistant Attorney General